

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
In the Matter of)	
)	CC Docket No. 98-67
Telecommunications Relay Services)	
and Speech-to-Speech Services for)	CG Docket No. 03-123
Individuals with Hearing and Speech)	
Disabilities)	

COMMENTS

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SUMMARY

In this proceeding, the Commission requests comment on a Petition for Declaratory Ruling filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing concerning video relay service (“VRS”) interoperability. Petitioner requests that the Commission examine competition in the VRS industry and the consumer’s ability to choose from among several VRS providers.

Sorenson, the largest video relay service provider for the deaf and hard of hearing in terms of conversation minutes, is a fairly new entrant in the VRS market. When Sorenson was creating its integrated VRS solution (“Sorenson VRS solution”), it developed a high-quality instantaneous visual communication over the Internet that was easy to use and included as many features as possible to help deaf and hard of hearing consumers. A network of highly qualified interpreters, deaf installers, and technical support complements Sorenson’s proprietary equipment and technology.

Today, VRS consumers are free to choose from among eight VRS providers. By selecting Sorenson, the consumer authorizes installation, at no charge, of a Sorenson-licensed integrated VRS solution, which includes a VP-100 videophone, access to the many features tied to the Sorenson technology, and Sorenson VRS interpreter services and technical support. Recognizing that many deaf and hard of hearing VP-100 users would find it easier to dial using a telephone number instead of a dynamic Internet protocol (“IP”) address, Sorenson developed a videophone

number dialing feature and integrated it into the VRS solution. Attempting to separate this component from the Sorenson VRS solution would raise numerous technical and legal concerns.

In addition to VRS, Sorenson users are free to initiate point-to-point calls, either by videophone number dialing or by IP address, depending on the equipment they are calling. Sorenson provides unlimited point-to-point calls at no charge to its users and does not block dialing to other videophones for non-video relay service calls. Sorenson users are able to receive calls from someone who does not have a VP-100 videophone.

Sorenson does not block hearing initiated calls from other VRS providers. A hearing caller can provide an IP address to another VRS company and call a deaf or hard of hearing person using a VP-100 videophone.

Sorenson is in compliance with the Americans with Disabilities Act, the Communications Act, and all of the non-waived mandatory minimum standards of Section 64.604 of the Commission's rules. The Commission has temporarily waived appropriate minimum standards for VRS providers, such as the speed of answer and emergency call handling requirements.

Nonetheless, Sorenson is currently working to resolve these and other operational and technical limitations on VRS. The biggest service-related concern is speed of answer and Sorenson is working to reduce wait times and maintain its reputation for high quality interpreter services. In the interim, Sorenson is

integrating into its VRS solution a mechanism to automatically move the caller, in an emergency situation, to the front of the queue for the next interpreter. Sorenson provides adequate disclosures of the current status and warnings that users should keep their text telephone (“TTY”) to use in case of an emergency.

Finally, Sorenson supports relay choice and competition. Entrepreneurs that are motivated are encouraged to develop innovations, including proprietary products and technology, which in turn increases consumer choice. Sorenson is committed to continuing its efforts to advance the communication needs of deaf and hard of hearing consumers, and will work with them to find solutions.

Petitioner’s request for complete interoperability would allow other VRS providers to benefit from technology and procedures developed by Sorenson. Complete interoperability would render useless additional development, because the investment into new and better equipment and technology could not be recovered, unless charged directly to customers. Moreover, complete interoperability would require an additional investment of scarce capital resources to unbundle the VP-100 equipment and technology, without any vehicle for recovering such expenses, because the features can only be accessed with the Sorenson VP-100. Such a result would be contrary to Section 225.

The Commission should maintain its current policy and encourage market solutions rather than regulatory mandated solutions that might in the long run stifle development and deployment of VRS products.

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COMMENTS

Pursuant to the Federal Communication Commission's ("FCC") March 1, 2005 Public Notice,¹ Sorenson Media, Inc. ("Sorenson") submits these comments in response to the Petition for Declaratory Ruling² filed on February 15, 2005, by the California Coalition of Agencies Serving the Deaf and Hard of Hearing ("Petitioner") requesting that the Commission examine the video relay service ("VRS") market and impose a condition of interoperability on VRS providers as a prerequisite to receiving compensation from the Interstate Telecommunications Relay Service ("TRS") Fund.

¹ *Pleading Cycle Established for Comments on Petition for Declaratory Ruling Filed by California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability*, Public Notice, CC Docket No. 98-67 and CG Docket No. 03-123, DA 05-509 (rel. March 1, 2005).

² California Coalition of Agencies Serving the Deaf and Hard of Hearing, *Petition for Declaratory Ruling on Interoperability*, CC Docket No. 98-67 and CG Docket No. 03-123, filed Feb. 15, 2005 ("*Petition*").

According to Petitioner, Sorenson has captured a dominant share of the VRS market by providing free video conferencing equipment that is not interoperable with other VRS providers or with other video conferencing equipment. Petitioner complains that consumers using Sorenson's equipment are unable to use relay services of other VRS providers for incoming or outgoing calls, and are unable to use the videophone number dialing feature, which only works with other users of the Sorenson equipment. Thus, Petitioner concludes, furnishing the Sorenson equipment, which is not interoperable, is a violation of the Communications Act³ and inconsistent with Commission policy. Petitioner requests that the Commission impose complete interoperability in order to ensure that video relay services are functionally equivalent to conventional voice telephone services.

As demonstrated by the discussion below, Sorenson is in full compliance with Section 225 of the Communications Act,⁴ including the "functionally equivalent" mandate, and all of the non-waived mandatory minimum requirements of Section 64.604 of the Commission's rules, which set forth the operational and technical standards for TRS.⁵

³ 47 U.S.C. §§ 151, 201, 202, 225, 251, 255, and 256.

⁴ 47 U.S.C. § 225. Section 225, which codifies Title IV of the Americans with Disabilities Act, requires relay services that are functionally equivalent to voice services to the extent possible, and in the most efficient manner as an accommodation to individuals with hearing or speech disabilities.

⁵ 47 C.F.R. § 64.604

I. Sorenson is in Compliance with Section 225 of the Communications Act and the Commission's Rules

A. Sorenson's Marketing Practices are Fully Compliant with the Commission's Rules and Recent Declaratory Ruling

Under current Commission TRS rules and policy, VRS consumers must have choice. Consumers may use one or several VRS providers and exclusive arrangements that limit a consumer to one provider are prohibited.⁶ The Commission's rules do not however, require interoperability, provided that the consumer gives an informed consent and is advised that he or she can select other providers.⁷

1. Sorenson's Practices Do Not Restrict Consumer Relay Choice

Petitioner contends that consumers should not be expected to maintain two separate video devices because hearing people are not expected to have two separate telephones. Petitioner explains that having two separate devices is a considerable burden because the consumer must keep separate lists of names and must learn how to operate two systems. Petitioner also believes that having two devices is unacceptable for incoming calls because the consumer can only use one device at a time, and a call coming into the device that is turned off will be missed.

⁶ *Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices Are Improper and Reminds That Video Relay Service (VRS) May Not Be Used As a Video Remote Interpreting Service*, Public Notice, CC Docket No. 98-67 and CG Docket No. 03-123 , DA 05-141, at p.3 (rel. Jan. 26, 2005) ("*January 26, 2005 Public Notice*").

⁷ *Id.*

Many commenters indicate that they have more than one videophone device,⁸ which is the consumer's choice. Those commenters who have more than one device generally prefer having an option, if a VRS provider has a wait time for an interpreter, to use another VRS provider. Additionally, for a Sorenson VP-100 user who has selected the video mail (SignMail™) feature, missed calls would not be a problem. If a consumer uses a VP-100 and another videophone, and the VP-100 is not connected, the caller, having received information for the VP-100 user, may leave a message and the communications assistant ("CA") will leave a video SignMail.

There are currently eight providers offering some form of VRS to the deaf and hard of hearing communities.⁹ Consumers are free to select VRS from any or all VRS providers. Sorenson's VRS solution does not inhibit a user's ability to choose. When a consumer selects Sorenson VRS solution, he or she is expressly advised that there are many choices for VRS providers, that Sorenson does not permit use of the Sorenson-licensed videophone to call other VRS providers, and that the consumer is free to use other equipment to contact other VRS providers. The consumer is also informed that their Internet Service Provider ("ISP") may require an additional

⁸ See, e.g., Comments of Huey Barbin and James Beldon.

⁹ The eight VRS providers include AT&T, CAC, Hamilton, Hands On, MCI, Nordia, Sprint, and Sorenson. See National Exchange Carrier Association, *TRS Performance Status Report, Fund Status As Of March 31, 2005*, available at <http://222.neca.org/media/0405TRSStatus.DOC>.

Internet protocol (“IP”) address and monthly charge to use multiple video relay devices.

When applying for a VP-100 videophone through Sorenson’s Web site, the consumer is presented with the following information:

Thank you for your interest in the Sorenson VP-100 videophone. You can use the Sorenson VP-100 to make point-to-point calls to other individuals. However, Sorenson VRS does not permit you to use Sorenson-licensed videophones to call other VRS providers. You are free to use other equipment you may have to contact other VRS providers. By submitting this application you are indicating that you would like to obtain a Sorenson VP-100 videophone for use with Sorenson VRS.¹⁰

Immediately following this information, the consumer has the opportunity to review the VP-100 Sorenson VRS Service & Products Agreement (“License Agreement”) prior to applying for a free VP-100. The consumer may also contact customer service at Sorenson with any questions. If the consumer decides to apply for the equipment, at the time the VP-100 is installed, an installer/trainer is available to the user to answer any questions. All of the VRS installers/trainers that work with Sorenson communicate using American Sign Language, and the overwhelming majority of the installers/trainers are deaf or hard of hearing. The installer/trainer will ensure that the equipment is properly connected, that the VP-

¹⁰ This information was added to Sorenson’s Website on the same page as the application for a VP-100 in response to the *January 26, 2005 Public Notice*, available at <http://www.sorensonvrs.com/apply/index.php>.

100 videophone is operating, and that all of the user's questions regarding use of the equipment and the License Agreement are answered.¹¹

By assigning the same IP address to the video equipment, the consumer can use a VP-100 videophone, another videophone, or a Web camera, according to which one is switched on, and each device can make a VRS call.¹² Consumers are not required to choose only one VRS provider, and consumers who choose Sorenson are under no obligation to use only Sorenson VRS for their VRS needs. This is consistent with a recent *January 26, 2005 Public Notice*, which provides that the fact that consumers "may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have."¹³ If the quality of the service is inadequate, or for any other reason, the consumer may simply choose another VRS provider.

Unlike traditional state TRS programs, VRS is subject to competition. With most state TRS programs that are certified as meeting the Commission's minimum standards, there is only one TTY provider. When making intrastate TTY calls, the consumer has no choice except to use the provider that has been selected for their

¹¹ An "Informed Customer Consent to Install a Sorenson Videophone" is also provided to the customer at the time of installation. This informed consent is a one-page document explaining that the user is under no obligation to use only Sorenson VRS and that the Sorenson VP-100 videophone can be used to make point-to-point calls to other individuals. It also explains that the consumer has many choices for VRS providers.

¹² *Id.*

¹³ *January 26, 2005 Public Notice*, at 3.

state. In contrast, the consumer is free to select the service and the equipment to use for VRS.¹⁴ Sorenson's equipment however, can only be used in conjunction with the Sorenson system. It is an integrated system providing equipment, features, and services that cannot be separated or used independently. Sorenson users are clearly informed that they must use the equipment with the entire system.¹⁵ Users are informed that the Sorenson VRS solution is not fully interoperable. Despite Petitioner's allegations, this is entirely consistent with Commission policy and the *January 26, 2005 Public Notice*.

2. Distribution of the VP-100 Does Not Violate Any Existing Rule

Petitioner contends that Sorenson's distribution of its video conferencing device is in violation of the functionally equivalent mandate of Section 225 because the device cannot be used to contact users of other VRS providers, the device cannot accept incoming calls from hearing people that are made through another VRS provider, and the device restricts use of the videophone number dialing feature to receiving calls or making calls from or to users of Sorenson's service. Petitioner is incorrect.

There is no requirement that all VRS-related equipment have the ability to complete calls to every VRS provider. Neither the statutory provisions of the

¹⁴ See *2002 Biennial Regulatory Review*, Report from Consumer and Governmental Affairs, CG Docket No. GC 02-311 and GC Docket 02-390, DA 03-131 at 10-11 (Dec. 31, 2002).

¹⁵ See footnote 11, *supra*, containing Sorenson's "Informed Customer Consent to Install a Sorenson Videophone."

Communications Act nor the Commission's rules entitle users to have the ability to use Sorenson's equipment to complete VRS calls using whichever carrier they choose. In fact, Section 225(d)(2) provides that the Commission must ensure its regulations encourage the provision of new technologies and services. Consequently, there are no restrictions in the Communications Act on VRS technology, and under the terms of the Act, carriers have the maximum flexibility to develop technologies and practices that lead to the rapid deployment and widespread availability of VRS.¹⁶ Moreover, the Commission's rules permit carriers to provide users with relay service equipment, either pursuant to tariff or not, but impose no technical requirements for the equipment provided.¹⁷ The Commission has never held that the Communications Act or the rules require that VRS-related equipment be capable of accommodating service from every VRS provider.

When choosing Sorenson, the consumer authorizes installation of a Sorenson-licensed integrated VRS solution, which includes a VP-100 videophone, access to the many features tied to the Sorenson technology, and Sorenson VRS interpreter services and technical support. Some of the VP-100 solution features include dialing by videophone number, video SignMail, missed calls, redial, and the ability to make VRS calls and to contact technical support 24 hours a day, seven days a week, 365 days a year.

¹⁶ See 47 U.S.C. § 225(d)(2).

¹⁷ 47 C.F.R § 64.606.

A consumer does not make a financial commitment in the Sorenson VRS solution that would require the selection of only one VRS provider. It is Sorenson's policy to provide a VP-100 videophone at no charge to be used with the Sorenson VRS solution. Because the videophone is provided to the user at no charge, the user may not use it to initiate video relay services from a VRS provider other than Sorenson. The cost of the VP-100, the installation of the VP-100, and the training to use the VP-100 are all non-recoverable costs and Sorenson is not compensated by any equipment distribution fund. This does not violate Section 225.

3. Commission Precedent Supports Use of Proprietary Equipment Compatible With a Provider's Own Service

Commission precedent supports allowing providers of nascent services like VRS to deliver them using proprietary equipment compatible only with the provider's own service. For example, the Commission, in a Declaratory Ruling addressing a Petition for Clarification filed by Ultratec, Inc., approved that company's exclusive use of a new proprietary technology to deliver a captioned telephone service, called "CapTel," as an enhanced voice carry over ("VCO") service.¹⁸ Although Ultratec, Inc. was the only carrier providing that service, the Commission defined the new captioned VCO service broadly to allow future providers to offer the service. Significantly, the Commission did not require the

¹⁸ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket 98-67, FCC 03-190, at ¶ 17 (2003).

company to make its equipment interoperable with new providers when they emerged.¹⁹

Sorenson provides its videophone at no expense to customers to encourage the use of a growing telecommunications relay service. By providing users with free equipment, Sorenson builds both user familiarity with the VRS service and the user goodwill that is crucial to its ability to compete with better-funded VRS providers affiliated with traditionally dominant common carriers. As the Commission knows, the greater the number of strong competing VRS providers, the faster VRS will become available on the ubiquitous scale Congress intended when it enacted Section 225 of the Communications Act.

Sorenson's practice of providing its users with free VRS calling equipment for use only with Sorenson's VRS is entirely consistent with these principles. All users receiving a free videophone are informed of this policy and users still have the option of using other videophone equipment to place calls to users of other VRS providers. This is different from the marketing practices which the Commission has held violate Section 225, such as "usage-based reward or incentive programs, or

¹⁹ Sprint Corporation and other providers, in cooperation with Ultratec, Inc., currently offer the CapTel service in many states. *See, e.g., Sprint Launches Innovative CapTel(SM) Relay Service for Hard of Hearing Community* (Mar. 24, 2004); *see also*, Joint Petition for Clarification by Ultratec, Inc. and Sprint Corporation, CC Docket No. 98-67 and CG Docket No. 03-123 (filed Dec. 11, 2003).

programs that tie the receipt of equipment to minimum usage requirements.”²⁰ Sorenson does not tie receipt of its equipment to any minimum usage requirements, and thus, Sorenson’s practices are consistent with the Commission’s recent Declaratory Ruling involving incentive programs.

4. Sorenson’s Videophone Number Dialing Feature Does Not Violate Any Commission Rule

Sorenson’s integrated videophone number dialing feature, which supports dialing IP address to IP address, does not violate any Commission rule, and it is consistent with the *January 26, 2005 Public Notice* because the feature does not restrict a consumer’s access to others. Sorenson developed dialing by videophone number in response to demand from deaf and hard of hearing users who found it easier to dial by static videophone number rather than dynamic IP address. Sorenson users find this feature very helpful because the videophone number does not change and there is no need to acquire a static (fixed) IP address or domain name.

Sorenson must have access to specific communication protocols and information within the video device, and have the license rights to access that information, in order to create the database for the videophone number dialing feature for Sorenson customers. Sorenson has the information and the right to

²⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket 98-67 and CG Docket No. 03-123, DA 05-140 at ¶ 8 (rel. Jan. 26, 2005).

access its own customers, but does not have the ability or the right to access information from other systems, nor does it have the capability to recognize or translate such information. This proprietary videophone number dialing feature is part of Sorenson's integrated VRS solution and is not available independently of the VP-100. A potential separation from the VRS solution would raise numerous technical and legal concerns.

In addition to VRS, Sorenson users are free to initiate point-to-point calls, either by videophone number or by IP address, depending on the equipment they are calling. This direct connection between two videophones, such as a VP-100 to a D-Link, is not considered a VRS call and, as such, is not subject to the Commission's TRS regulations. Sorenson provides unlimited point-to-point calls at no charge to its users and does not block dialing to other videophones for non-video relay service calls.

Sorenson users are able to receive calls from someone who does not have a VP-100 videophone if the caller dials the correct IP address. There are two point-to-point dialing methods in the VP-100 videophone — dialing by videophone number and dialing by IP address. The industry standard for dialing a point-to-point call is by IP address to IP address, which represents the actual videophone connection to the Internet. Dialing by videophone number is a method that both Sorenson and D-link provide as an option to call videophones that they produce. Because the Sorenson VP-100 and D-link videophone are separate products using

unique videophone numbers, the methods of dialing do not translate between devices. Sorenson does not have the licensing rights to integrate these two dialing directories or any other proprietary dialing methods used by other videoconferencing solutions. Petitioner's claim that Sorenson unlawfully discriminates by restricting a user's access to others with its videophone number dialing feature, is ill founded and does not acknowledge the legal and technical difficulties associated with interoperability. Petitioner complains that dialing by IP address is burdensome because IP addresses are dynamic and frequently change. This problem exists independent of Sorenson and must be addressed by each provider. The problem is industry wide and could be addressed by the industry generally.

Sorenson does not have access to every IP address, nor do other VRS providers. One potential solution for this problem is for individual consumers to request that their ISP assign a static (fixed) IP address. Another solution is for the customer to contact the ISP and request a static IP address or a domain name that resolves to the dynamic IP address assigned to them. The use of domain name resolution can also be accomplished using services offered on the Internet in conjunction with a computer connected to the same network as the video conferencing equipment.²¹

²¹ <http://www.no-ip.com/services/page/free/dynamic/dns>
<http://www.dyndns.org/services/dns/dyndns/>

or

The VP-100 offers multiple methods of contacting other users including the industry standard of dialing by IP addresses. It is not necessary for both parties to have a VP-100 videophone to call each other. Sorenson allows users of its VP-100 to make unlimited point-to-point calls to other video endpoints.²² Since users have multiple methods of contacting other users, including the industry standard of dialing by IP address, Sorenson's videophone number dialing feature is not restrictive like the practices which the Commission has held violate Section 225.

5. Contrary to Petitioner's Assertion, the Sorenson VP-100 Accepts Incoming Calls

Petitioner mistakenly contends that the Sorenson VP-100 blocks incoming calls from hearing people that are made through another VRS provider. Sorenson does not block calls from other VRS providers. A hearing caller can provide the IP address of the VP-100 to another VRS provider and call a deaf or hard of hearing person using a VP-100 videophone. A hearing person can also place a call to a Sorenson user through Sorenson VRS if the user provides the hearing person with the Sorenson videophone number or IP address for the device they use. Furthermore, a caller using a different videophone can call a Sorenson user by providing the IP address, which is the industry standard.

²² For e.g., NetMeeting, Polycom, Tandberg, D-link, other VP-100s. Informal surveys indicate that the VP-100 users make two to three times as many point-to-point calls as they do VRS calls. Point-to-point calls are not reimbursed by the Commission.

Petitioner also asserts that Sorenson's users are not permitted to accept incoming calls from another VRS provider due to the terms of the equipment license agreement. Although the License Agreement, at the time the Petition was filed, contained language limiting use of the Sorenson products and services in this situation, Sorenson has never implemented technology to block incoming calls from other VRS providers. Recognizing that the incoming hearing initiated callers are not party to a License Agreement with Sorenson, the provision has been removed.

B. Sorenson is in Compliance With All Non-Waived Mandatory Minimum Standards

The Commission granted waivers of several of the mandatory minimum standards set forth in Section 64.604 because VRS is in its infancy. Furthermore, there are technological and operational limitations that justify these waivers.²³ Specifically, the Commission has waived requirements regarding speed of answer, emergency call handling, offering operator assisted calls, handling certain types of long-distance calls and equal access to interexchange carriers, and pay-per-call services. Having found that extensions of the waivers were in the public interest, the Commission has also extended these waivers.²⁴ Sorenson is in compliance with

²³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket 98-67, DA 01-3029, 17 FCC Rcd 157 at ¶¶ 10, 13, 14, 16, 18 and 20 (Dec. 31, 2001) ("*VRS Waiver Order*").

²⁴ In 2004, the Commission recognized that VRS is not yet functionally equivalent and extended the waivers, stating that "because VRS remains a voluntary service, it is appropriate to provide flexibility that might not be warranted for a mandatory service." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dockets 90- (continued...)

all TRS rules, with the exception of these standards that are the subject of the waivers.

1. **Sorenson is Making Efforts to Improve Speed of Answer by Increasing the Number of Qualified Interpreters**

Because the demand for VRS has rapidly increased and the number of highly qualified interpreters is limited, VP-100 users occasionally experience delays in placing calls through Sorenson VRS. This is Sorenson's biggest concern with providing service to its customers.

Petitioner claims that the speed of answer or wait time for an interpreter renders the service not functionally equivalent and that interoperability would help attempts to solve this problem by allowing the user to select another provider. The problem however, is a systemic lack of qualified interpreters. The problem is being addressed by the Commission through its temporary waiver of the TRS speed of answer requirement. Additionally, the Commission has requested comment on this issue and should be addressing it soon.

Although the speed of answer requirement has been waived and VRS providers are not required to comply with the requirement, Sorenson is committed to reducing wait times for VRS users and maintaining its reputation for high quality interpreter services. In an effort to meet this goal, Sorenson is taking

(...continued)

571 and 98-67 and CG Docket 03-123, FCC 04-137, 19 FCC Rcd 12475 at ¶ 121 (June 30, 2004) (*2004 TRS Report & Order*).

aggressive steps to resolve this problem, such as recruiting new interpreters in many areas of the country, opening additional call centers, providing scholarships and participating in educational programs. Sorenson has the largest pool of qualified interpreters for VRS. In the last twelve months, Sorenson has opened ten VRS Call Centers and currently has fifteen VRS Call Centers. In addition, Sorenson plans to add many more VRS Centers to meet the demand for VRS and to provide faster speed of answer response.

2. Emergency Call Handling and Technical Limitations

Petitioner contends that the Sorenson VRS solution, which restricts users of the VP-100 to use Sorenson VRS, creates a potentially dangerous situation for a consumer in the event of an emergency and the need for an immediate connection to police, fire, or medical assistance.²⁵ However, current technical limitations on emergency call handling are industry wide. In fact, to allow VRS providers time to find a solution to such technical limitations, the Commission granted a waiver of the mandatory minimum standards for emergency call handling,²⁶ and recently extended the waiver until January 1, 2006.²⁷ Because of the waiver, VRS providers are not currently subject to the Commission's TRS requirement on handling

²⁵ Petitioner states that although the Commission and VRS providers caution deaf and hard of hearing consumers not to rely on VRS for emergency situations, the reality is that many of these consumers have already abandoned their TTYs, choosing instead to use VRS exclusively for all communications.

²⁶ *VRS Waiver Order* at ¶ 22. This Order granted a waiver up until December 31, 2003.

²⁷ *See 2004 TRS Report & Order* at ¶ 111.

emergency calls to provide automatic and immediate location information to the appropriate Public Safety Answering Point (“PSAP”).²⁸

Regardless of this waiver, Sorenson is currently researching emergency call capabilities for VRS services. Current technology in the industry does not make it possible to determine the caller’s geographic location and without the ability to receive the automatic number identification (“ANI”) from the VRS caller who initiates the relay call via the Internet, the VRS provider is unable to automatically pass the ANI to the appropriate PSAP. The problem is in the nature of the Internet and impacts voice over IP providers as well.²⁹ Sorenson is unaware of any industry wide solution for handling emergency calls in the same manner as traditional TRS calls.

Until the industry finds a workable solution, and to address the waiting time concerns raised by Petitioner, Sorenson plans to integrate software that automatically moves the caller, in an emergency situation, to the front of the queue for the next available CA. If a caller requests to be connected to an emergency agency, the CA will obtain location information that will be provided to the emergency agency. In addition, Sorenson carefully discloses that VRS is not a substitutable service for traditional TTY wireline for handling emergencies.

²⁸ See 47 C.F.R. § 64.604(a)(4).

²⁹ See *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 at ¶¶ 50-60 (March 10, 2004).

Included with the disclosure is a warning that informs users to always keep their TTY for use in case of an emergency.³⁰

II. VRS is a Voluntary Relay Service in its “Technological Infancy”

In March 2000, the Commission added VRS as a voluntary form of relay service (at the time, VRS was referred to as video relay interpreting or “VRI”).³¹ The Commission concluded that the provision of VRS should not be mandatory, given its “technological infancy,” but that the Commission should continue to monitor VRS technology. It also acknowledged that VRS “will make relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language,” but pointed out that “there are technological uncertainties that make a mandatory requirement for [VRS] premature.”³²

³⁰ The emergency information on the VP-100 packaging states: “Do not use Sorenson VRS for emergency/911 calls. In an emergency, dial 911 directly using TTY to ensure immediate attention and identification of your location.” The Web site contains the following information on placing a 911 call: “Because of current limitations, Sorenson VRS cannot automatically route emergency calls to the nearest Public Safety Answering Point (PSAP) at this time. Sorenson VRS urges you to use traditional TTY relay services for emergency calls to avoid a possible life-threatening delay. However, if a 911 call is placed and reaches the video relay interpreter, the interpreter will make every effort to complete the call and relay your information to the emergency call center. You will need to provide your name, address, city, state, and local phone number (not 911) for the emergency services that you wish to call. Dialing 911 from your phone or through TTY services is safer and faster than what Sorenson VRS can provide at this time.”

³¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140, 5152 at ¶¶ 21-27 (Mar. 6, 2000) (*Improved TRS Order*).

³² *Id.* at ¶ 23.

Sorenson agrees with the Commission's determination that demand for VRS is moving from traditional TTY service over the telephone lines to new services, like VRS over the Internet, because VRS provides the most natural form of relay for deaf and hard of hearing consumers. Sorenson also believes that in the long run, VRS should be a mandatory service, but at this time, there are still technological and operational uncertainties that need to be resolved.

Prior to the Commission's March 2000 Order, the only services found to be TRS involved TTY, and the rules contained mandatory minimum standards only for TTY-based relay services.³³ New TRS technologies, as they develop, challenge the Commission to determine what specific performance standards are necessary to ensure functional equivalence to voice telephone service:

TRS is required by statute to provide telecommunication services which are functionally equivalent to voice services to the extent possible. Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service.³⁴

All relay services, whether mandatory or voluntary, must comply with the non-waived mandatory minimum service quality standards in order to be funded by

³³ See 47 C.F.R. § 64.604.

³⁴ *Improved TRS Order* at ¶ 4.

the Interstate TRS Fund.³⁵ In December 2001, when the Commission granted waivers of certain mandatory minimum requirements for VRS providers, the Commission stated that it “intend[ed] to give [VRS] providers time to refine their VRS technology before incurring significant costs to provide fully compliant service.”³⁶ In June 2004, at the time it granted an extension of the waiver for speed of answer rule, the Commission again acknowledged that VRS needed time for technology to develop. By granting waivers of the mandatory minimum requirements, the Commission recognized that VRS remains a voluntary service that is still emerging and not yet functionally equivalent to conventional telephone service.³⁷

The Commission’s mandatory minimum performance standards that are used to ensure the relay service is functionally equivalent to a voice telephone service, were written for TTY-based TRS services. VRS is technically and operationally different from traditional TRS and, as such, the Commission may require a different regulatory approach in which functional equivalency is based on evaluations of service requirements. Until the Commission determines that a different approach should be required for VRS, including specific performance standards that are necessary to ensure that VRS is functionally equivalent to voice

³⁵ *Id.* at ¶ 9.

³⁶ *See VRS Waiver Order* at ¶ 7.

³⁷ *2004 TRS Report & Order* at ¶ 121.

telephone service, Sorenson will continue to comply with the existing non-waived standards in 47 C.F.R. § 64.604.

The Commission acknowledged that their approach was consistent with the statutory mandate in Section 225 to provide TRS services to the extent possible and in the most efficient manner and stated:

We believe that the approach we take here permits market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allows for the development of new and improved technology.³⁸

Much of the experimentation involved unresolved issues of compatibility on a number of equipment configurations including a personal computer and video conferencing equipment with access to broadband transmission services. Then, Web cameras emerged as the industry standard, despite inferior image quality. In 2002, Sorenson released the VP-100, a videophone that sits on a television and enables two-way video conferencing between a deaf or hard of hearing individual and the video relay interpreter. The VP-100 uses broadband Internet without a personal computer, and offers real-time video communication at up to 30 frames per second, resulting in a much higher-quality image and more natural and accurate communications with subtle gestures and expressions at a fraction of the cost. The Sorenson VP-100, the first consumer Internet videophone designed for the deaf and hard of hearing communities, is part of a fully integrated system.

³⁸ *Improved TRS Order* at ¶ 23.

The VP-100 videophone and its benefits to the deaf and hard of hearing consumers would not have occurred without the foresight of the Commission in deciding to encourage experimentation with technologies and to foster the availability of this new relay service to persons with disabilities by allowing reimbursement from the Interstate TRS Fund. The Commission has relied, and is still relying, on market forces, rather than government intervention, to determine the technology and equipment that is best suited for the provision of VRS.³⁹ That is exactly what Sorenson did, and other providers are free to develop new and better technology.

III. Sorenson's Success in Developing Technology Supports Competition and Promotes Innovation and Greater Choice

A. The AOL Time Warner Case Cited by Petitioner is an Excellent Example of How Market Forces Work to the Benefit of Consumers⁴⁰

Petitioner argues that the success Sorenson has achieved through its investment in technology is a threat to competition. To support this claim, Petitioner relies on the America Online ("AOL") Time Warner case⁴¹ and the

³⁹ *Id.*

⁴⁰ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and American Online, Inc. Transferors, to AOL Time Warner Inc., Transferee*, FCC 01-12 (Jan. 22, 2001) ("AOL Time Warner Order").

⁴¹ By way of background, in reviewing the transfer of control applications in the AOL Time Warner merger case, the Commission was concerned that AOL's market dominance in the text-based instant messaging ("IM") market, along with Time Warner's transmission assets and programming content, would result in AOL Time Warner dominating the market for advanced IM-based high-speed services. Prior to the merger, the Commission believed that the combined firm would deprive the public of the benefits of interoperability and the potential for innovation associated with interoperability. Accordingly, the Commission placed a condition on the merger stating that AOL

(continued...)

Commission's analysis for placing a condition on grant of the merger.⁴² Petitioner urges the Commission to impose a condition of interoperability on all VRS providers as a prerequisite to receiving compensation from the Interstate TRS Fund. Petitioner cites the AOL Time Warner merger as "strong precedent" because, according to the Petitioner, in that case, the Commission imposed an interoperability condition in "a situation strikingly similar to the one now before it."⁴³ Petitioner contends that, like the closed system in AOL Time Warner, Sorenson has created a universe of its own deaf and hard of hearing customers who are locked into its VRS and are only able to communicate with one another through point-to-point calls and with hearing people through Sorenson VRS.

(...continued)

Time Warner must not offer an advanced IM-based high-speed service application using a Names and Presence Directory ("NPD") over the IP path until AOL Time Warner satisfied one of the following three options: (1) it implemented a standard for server-to-server interoperability of NPD-based services; (2) it entered into three contracts with significant, unaffiliated competing providers of NPD-based services offered to the public; or (3) *it demonstrated that "the condition no longer serves the public interest, convenience or necessity because there has been a material change in circumstances."* *Id.* at ¶ 325 (emphasis added).

⁴² Sorenson does not dispute Petitioner's assertion that the Commission's general authority under Title I of the Communications Act, 47 U.S.C. § 151, likely includes relay services over the Internet. The *AOL Time Warner Order* states that the Commission has jurisdiction under Title I, however, pursuant to the Commission's subsequent *Grant of Relief From the Condition*, *infra* at n. 44, as a matter of policy the Commission should rely on competition for innovative services instead of regulation. *See also*, Statement of then-Chairman Michael K. Powell, Concurring in Part and Dissenting in Part to the *AOL Time Warner Order*, at 12.

⁴³ *See Petition* at p.10.

Petitioner fails to point out, however, that the condition was subsequently removed by the Commission.⁴⁴ The Commission's *Grant of Relief From the Condition* delineates that market forces, not regulatory structure, restores equilibrium in a competitive environment. In response to AOL's closed system at issue in that case, Yahoo and Microsoft invented alternative platforms to compete with AOL and were successful in gaining market share.

Sorenson made significant investment in research and development to create new technologies and services that would benefit the deaf and hard of hearing communities. It offered the technology and services to its users at no cost. The market responded and Sorenson gained market share. There is nothing to prevent competitors, many of whom are better capitalized than Sorenson, from investing in new products and services and disbursing them to the deaf and hard of hearing communities. As clearly illustrated by Sorenson's success, better products and better services will result in greater market share. This was the approach adopted by the Commission in granting waiver of certain minimum requirements. It was also used in the AOL *Grant of Relief From the Condition*.

⁴⁴ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and American Online, Inc. Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, *Petition of AOL Time Warner Inc. for Relief From the Condition Restricting Streaming Video AIHS*, Memorandum Opinion and Order, FCC 03-193 (Aug. 20, 2003) ("*Grant of Relief From the Condition*").

B. FCC Removed Interoperability Condition in AOL Time Warner Case

On April 2, 2003, AOL Time Warner filed a petition requesting that the Commission remove the condition restricting its ability to offer Internet users streaming video advance IM-based high-speed services.⁴⁵ The Commission concluded that removal of the IM condition would benefit consumers by enhancing competition, bringing increased choice for consumers, lower prices, new products offerings and improved service.⁴⁶

The events that developed following the Commission's imposition of the condition on AOL Time Warner illustrate that the Commission should not impose interoperability for VRS. In the AOL Time Warner Case, AOL developed a text-based instant messaging service with added features, and consumers chose the AOL product and service. AOL dominated the market, raising the Commission's concerns enough to condition the grant of the AOL Time Warner transfer application. However, because of the competitive pressure from AOL, other competitors emerged with different innovative products, and increased their market share. The Commission subsequently removed the interoperability condition, based on this shift in market share. The Commission pointed out when removing the condition placed on AOL Time Warner, that market-based initiatives, such as an

⁴⁵ AOL Time Warner, Inc., *Petition for Removal of the Condition Restricting Its Provision of Advanced Instant Messaging-Based High-Speed Services (AIHS)*, CS Docket No. 00-30 (filed Apr. 2, 2003) (“*AOL Petition*”).

⁴⁶ *Grant of Relief From the Condition* at ¶ 12.

agreement between two competitors, and the IM interoperability initiatives before the Internet Engineering Task Force demonstrated positive momentum toward achieving interoperability.⁴⁷

To compare, Sorenson developed a high-quality videophone, the VP-100, with added features. Sorenson provided a better product and service, and consequently, the majority of the consumers chose the VP-100. Sorenson has not prevented these users from acquiring other VRS products. Because of this competitive pressure from Sorenson, other competing providers will likely emerge with different innovative products, and the consumers will benefit.

The AOL Time Warner case involved a closed system, one in which users of different systems could not communicate with other providers, and the Commission's concern that AOL's market dominance in IM, along with Time Warner's transmission assets and programming content, would result in AOL Time Warner dominating the market for advanced IM-based high-speed services. In contrast, Sorenson's VRS solution is not a closed system because hearing people can get access through another VRS provider, the VP-100 videophone offers multiple methods of contacting other users including the industry standard of IP addresses, and it is not necessary for both parties to have a VP-100 videophone to call each other.

⁴⁷ *Id.* at ¶ 11.

As the Commission stated in 2000 when it added VRS as a relay service, the approach taken should permit market forces, not the Commission, to determine the technology and equipment that is best suited for the provision of VRS.⁴⁸ When the Commission granted AOL Time Warner's request to remove the interoperability condition on the merger, the Commission stated that market-based initiatives demonstrated positive momentum toward achieving interoperability.⁴⁹ The Commission should take the same approach with the equipment and technology for VRS in response to the pending Petition for Declaratory Ruling. The public will benefit by not forcing VRS interoperability.

IV. Imposed Interoperability Would be Detrimental to the Development of Future VRS

Petitioner urges the Commission to require that a VRS provider's equipment and services be completely interoperable with its competitors. This would allow other VRS providers to benefit from Sorenson's technology by placing additional VRS calls and receiving additional Interstate TRS Funds, while Sorenson potentially would not realize a return on its investment.

Sorenson has invested much capital in developing an Internet videophone and bringing it to the deaf and hard of hearing communities. The VP-100 has been extremely successful because of its high-quality image, its added features, and its

⁴⁸ *Improved TRS Order* at ¶ 23.

⁴⁹ *Grant of Relief From the Condition* at ¶ 11.

high-quality services. Sorenson is continuing to invest in research for innovative VRS services.

If the Commission imposes VRS interoperability, much of the incentive to develop innovations would disappear because any new technology would be shared with all other VRS providers, without an opportunity to receive any return on the investment. Even Sorenson, with its excellent record of innovation, would be discouraged from making further investments in new VRS technology.

Such a result would be detrimental to the development of new VRS technology and inconsistent with Section 225(d)(2), which requires the Commission to ensure that its regulations encourage the provision of new technologies and services. The preferred approach is to allow market forces to determine the technology that best suits VRS. This was the Commission's approach when it added VRS as a relay service in 2000,⁵⁰ and in just a few years, the methods for video communications have dramatically improved, from an inferior Web camera on a computer to a more functionally equivalent videophone. The Commission should continue this approach to encourage new VRS technology.

⁵⁰ See *Improved TRS Order & FNPRM* at ¶ 23.

V. Sorenson's Practices are Otherwise Consistent with the Communications Act

A. Sections 251, 255, and 256 of the Telecommunications Act

Petitioner contends that, by refusing to interconnect, Sorenson is in violation of Sections 251, 255, and 256 of the Telecommunications Act.⁵¹ Specifically, Petitioner states that since Sorenson's equipment can only access one VRS provider, it is not accessible to and usable by individuals with disabilities. Petitioner's argument that, pursuant to Section 251, Sorenson has a duty to interconnect appears to be an unbundling notion. Petitioner suggests that Sorenson should give out free equipment to consumers, and then open up its VRS solution to all competing providers.

If Sections 251 and 256 were to apply, there is nothing in the Communications Act that would require a carrier to unbundle for free. Section 251(c) specifically provides that incumbent local exchange carriers have a duty to provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Accordingly, any duty to interconnect would also require just compensation.

Section 255 and 251(a)(2) require that telecommunications customer premises equipment ("CPE") and services be accessible to and usable by persons with disabilities, if readily achievable. If not readily achievable, the manufacturer or service provider must make their products and services compatible with adaptive

⁵¹ 47 U.S.C. § 251, 255, and 256.

equipment or devices that are commonly used by people with disabilities.⁵² This includes devices that help make telecommunications products and services accessible to people with disabilities, such as TTYs, visual signaling devices and amplifiers. Specialized CPE includes equipment to achieve access in the origination, routing, or termination of calls. Manufacturers and service providers are also required to ensure that information and documentation is accessible to users with disabilities. Under Section 251(a)(2), telecommunications carriers have the duty not to install network features, functions, or capabilities that do not comply with the Section 255 guidelines.

When the Commission adopted rules to implement Sections 255 and 251(a)(2), the Commission stated that these provisions require manufacturers and service providers to ensure that persons with disabilities have access to equipment and services provided, and that Section 225 “focused specifically on access to communications.”⁵³

The Commission adopted rules based upon guidelines established by the Architectural and Transportation Barriers Compliance Board, and manufacturers

⁵² 47 U.S.C. § 255(d).

⁵³ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996 and Access to Telecommunications Service, Telecommunications Equipment and User Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, WT Docket No. 96-198, FCC 99-181 at ¶ 3 (Sept. 29, 1999).

must follow the guidelines in designing new products and services in this industry.⁵⁴ Sections 6.3 contains the following definitions for accessible and usable:

(a) *Accessible* shall mean that:

(1) Input, control, and mechanical functions shall be locatable, identifiable, and operable without vision, with low vision and limited or no hearing, with little or no color perception, without hearing, with limited manual dexterity, with limited reach and strength, with a Prosthetic Device, without time-dependent controls, without speech, and with limited cognitive skills.

(2) All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, comply with the availability of visual information for low vision users, access to moving text, availability of auditory information for people who are hard of hearing, prevention of visually-induced seizures, availability of audio cutoff, non-interference with hearing technologies, and hearing aid coupling.

...

(g) *Usable* shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instruction, product information, documentation, bills and technical support which is provided to individuals without disabilities.

The VP-100 is accessible to a person who is or deaf or hard of hearing because it provides the requisite methods for inputting information and retrieving messages. The obligations only apply if they can be easily achievable, meaning easily accomplishable without much difficulty or expense. A Sorenson VRS user is able to

⁵⁴ See 47 C.F.R. §§ 6.1 to 7.23.

learn about and effectively operate the features, by having access to instructions, user guides, support services, such as deaf installers, and technical support. In addition, Sorenson evaluates the accessibility and usability of equipment and services, conducts market research, product design, and product trials, which include persons with disabilities, and Sorenson works cooperatively with disability-related organizations. In summary, Sorenson continually tests and provides updates to its products and services, and is otherwise in compliance with Sections 255 and 251(a)(2).

B. Sections 201 and 202 of the Communications Act

Petitioner contends that Sorenson's refusal to allow its users access to other VRS providers constitutes an unreasonable marketing practice in violation of Section 201(b). To determine whether a marketing practice or representation made by a common carrier, in connection with a communication service, constitutes an unjust and unreasonable practice under Section 201(b), the Commission would apply principles of truth and accuracy, to ensure the consumer has a right to accurate information that is needed to make an informed decision.⁵⁵ Sorenson is in compliance with the *January 26, 2005 Public Notice* and Section 201(b) because Sorenson informs its users that the VP-100 may not be used to initiate services from

⁵⁵ Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers, 5 FCC Rcd 8654, 8663 (March 1, 2000).

a VRS provider other than Sorenson, and the disclosure statements are clear.⁵⁶ These practices are consistent with the *January 26, 2005 Public Notice* and Section 201(b).

Petitioner argues that Sorenson's practices of restricting access to a competing VRS provider and restricting incoming calls, constitutes unlawful discrimination, in violation of Section 202(a). Section 202(a) prohibits common carriers from discriminating in the provision of a like communications service "directly, or indirectly by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality."⁵⁷ Sorenson has not violated Section 202(a) because there is no evidence that Sorenson treats customers differently. All customers who accept the VP-100 are free to use another VRS provider with other equipment. This is also consistent with the *January 26, 2005 Public Notice*.

CONCLUSION

Based upon the foregoing reasons, Sorenson respectfully requests that the Commission deny Petitioner's relief sought in its Petition for Declaratory Ruling on VRS interoperability.

⁵⁶ *See, supra*, n. 9.

⁵⁷ 47 U.S.C. § 202(a). To determine whether a violation of this section has occurred, the Commission will consider: (1) whether the services are "like," (2) if yes, whether the terms and conditions pursuant to which the services are provided are different, and (3) if so, whether the differences are reasonable. The complainant has the burden of establishing the first two components, and the carrier must justify that the discrimination is reasonable.

DATED this 15th day of April 2005.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct of copies of the foregoing **COMMENTS**
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